PAN-ELECTRIC APPLIANCES PTE. LTD.

v.

ELECTRICAL & ALLIED INDUSTRIES BHD.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. 2059 OF 1983]
20 NOVEMBER 1985

CIVIL PROCEDURE: *Summary judgment - Order 14 RHC 1980 - Triable issues - Affidavit of merits - Amendment of statement of claim after hearing before Senior Assistant Registrar - Arbitration - Whether terms of agreement in dispute.*

The plaintiffs claimed in their statement of claim filed on 28 July 1983 for the sum of S$166,350.07 being the price of goods sold and delivered by the plaintiffs to the defendants. Appearance was entered by the defendants on 8 September 1983 and their defence filed on 15 September 1983 in which the defendants admitted owing a sum of S$20,115.49 to the plaintiffs for the goods sold and delivered but denied any other monies owing to the plaintiff.

On 14 January 1984 the plaintiffs filed an application for summary judgment under O. 14 RHC 1980 which was dismissed by the Registrar on 23 May 1985. The plaintiffs filed an appeal against this decision.

On 28 January 1985 the plaintiff filed an application to amend the statement of claim and leave to amend was granted. On 27 February 1985 the amended statement of claim was filed in which it was alleged that the defendant owed the sum of S$166,350.07 for both goods sold and delivered and services rendered.

The plaintiffs filed a supplementary affidavit dated 19 March 1985 in which they exhibited an agreement concluded between the plaintiffs and defendants wherein manufacturing fees were payable to the plaintiff. Invoices exhibited showed that there was an amount of S$77,035.50 owing in respect of services rendered.

The defendants did not amend their defence after the plaintiffs amended their statement of claim nor did they file any affidavit to consent the allegations contained in the supplementary affidavit.

Held:

[1] That it was not improper for the plaintiffs to amend their statement of claim after the hearing before the Registrar and the fact an appeal against that decision was pending did not preclude the plaintiffs' from amending their statement of claim as the appeal before the Judge was by way of a rehearing.

[2] That it was also not improper for the plaintiffs to file a supplementary affidavit before the appeal before the Judge was heard.

[3] As the defendants did not amend their defence nor did they file a further affidavit to contest the plaintiffs' claim for services rendered, the defendants had no defence whatsoever to the plaintiffs' claim for S$77,035.50 and as such judgment was entered in favour of the plaintiffs for the sum of S$77,035.50.

[4] As the arbitration clause in the agreement only covered disputes concerning the interpretation of the provisions of the agreement, the question of arbitration did not arise.

Legislation referred to:
Rules of the High Court 1980, O. 14

Other sources referred to:
Mallal's Supreme Court Practice, 2nd Edn., Vol. 1, p. 680

For the plaintiff - C.K. Wee; M/s. Wee Choo Keong & Faaiz
For the defendant - L. Ponniah; M/s. Syed Alwi, Ng & Teoh

JUDGMENT

Zakaria Yatim J:

This is an appeal against the decision of the Registrar given on 23 May 1985, refusing to order summary judgment in favour of the plaintiffs.

The plaintiffs filed a writ against the defendants on 28 July 1983. The plaintiffs' claim was for a sum of S$166,350.07 being the price of goods sold and delivered by the plaintiffs to the defendants. The defendants entered appearance on 8 September 1983, and filed their defence on 15 September 1983. In their defence, the defendants admitted that a sum of S$20,115.49 was due to the plaintiffs for the goods sold and delivered. According to the defendants, no further monies were due and owing to the plaintiffs.

On 14 January 1984, the plaintiffs filed an application for summary judgment under O. 14 of the Rules of the High Court 1980. The plaintiffs' application was dismissed by the Registrar on 23 May 1985.

On 28 January 1985, the plaintiffs filed an application to amend the statement of claim. Leave to amend was granted by the Registrar and the amended statement of claim was filed on 27 February 1985. In the amended statement of claim, the plaintiffs averred that the defendants owed them a sum of S$166,350.07 not only for the price of goods sold and delivered, but also for services rendered by the plaintiffs to the defendants at the defendants' request.

The appeal was heard before me in chambers on 17 September 1985.

At the hearing of the appeal, Mr. L. Ponniah, Counsel for the defendants, drew my attention to the fact that the amended statement of claim was filed after the hearing of the O. 14 application before the Registrar. In my opinion, it was not improper for the plaintiffs to amend the statement of claim after the hearing before the Registrar. The plaintiffs were entitled to amend their statement of claim any time before the close of the pleadings. The fact that an appeal against the decision of the Registrar was pending before me did not preclude the plaintiffs from amending their statement of claim. After all, the appeal was argued before me by way of rehearing and I treated the matter as if it had come for hearing for the first time. See *Mallal's Supreme Court Practice*, 2nd Edn. Vol. 1, p. 680

Since the appeal was heard by way of rehearing, it was not improper for the plaintiffs to file a supplementary affidavit dated 19 March 1985. The supplementary affidavit exhibited an agreement concluded between the plaintiffs and the defendants on 26 July 1985. Article 5 of the agreement states:

> In consideration of the licensee, information, rights and services granted, furnished and rendered, and to be granted furnished and rendered by the technical adviser hereunder, the licensee shall pay to the technical advisor from time to time manufacturing fees in respect to the licensed products computed as follows:

Model	Rate
Twin Deer Models	) S$19 per unit
Chest Freezers	) manufactured.

Manufacturing fees and charges are payable on all units manufactured irrespective of brand names. Such manufacturing fees and charges to be payable to the technical adviser quarterly based on such documentary evidence based on such documentary evidence of manufacturer as agreed by the two parties herein, except that a minimum manufacturing fee of RM10,000 is payable on signing of this agreement, such minimum manufacturing fee is non-refundable but allowable for set-off against manufacturing fee payable by GEC for the first year under this agreement.

Out-of pocket expenses such as printing drawings, and samples are also payable to the technical adviser for all units covered in this article.

The affidavit also exhibited a number of debit notes and invoices. Mr. S.K. Wee, Counsel for the plaintiffs, referred to five of the invoices from the plaintiffs to the defendants in respect of technical fees for refrigerators. Mr. Wee asked the Court to enter judgment against the defendants for a sum of S$77,035.50 for services rendered. According to him, the defendants did not contest the plaintiffs' claim for services rendered.

The defendants did not amend their statement of defence after the plaintiffs had amended their statement of claim. The defendants also did not file any further affidavit to contest the plaintiffs' claim for services rendered. In other words, I found the defendants failed to file any affidavit of merits in respect of the plaintiffs' claim for services rendered.

Mr. Ponniah referred to Article 12 of the agreement dated 26 July 1975 and submitted that there was a triable issue in the instant case. Article 12 states:

> If any dispute shall arise concerning the interpretation of any provision of this agreement, such dispute shall be referred to arbitration.
>
> The dispute shall be settled according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce by the arbitrators nominated by the President for the time being of the International Chamber of Commerce in Malaysia, after consultation with the parties.

In my judgment, there is no dispute on the interpretation of the provisions of the agreement in the present case. Therefore, the question of referring the matter for arbitration does not arise.

I found the defendants had no defence whatsoever to the plaintiffs' claim for services rendered, and I accordingly gave judgment for the plaintiffs in the sum of S$77,035.50 with costs.

Also found at [1988] 2 CLJ 473